



General Assembly

January Session, 2007

Raised Bill No. 7327

LCO No. 5085

05085_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING CIVIL ACTIONS RELATED TO THE LONG-TERM CONSUMPTION OF FOOD PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) (a) As used in this
2 section:

3 (1) "Claim" means (A) any claim asserted by or on behalf of a
4 natural person, or (B) any derivative or other claim arising from such
5 claim of a natural person that is asserted by or on behalf of (i) any
6 individual other than such natural person, or (ii) any entity, including
7 a governmental entity;

8 (2) "Food" means (A) articles used for food or drink for humans, (B)
9 chewing gum, and (C) articles used for components of any such food,
10 drink or chewing gum; and

11 (3) "Long-term consumption" does not include a single instance of
12 consumption.

13 (b) Except as provided in subsection (c) of this section, no civil

14 action shall be maintained against a manufacturer, packer, distributor,
15 carrier, holder, seller, marketer or advertiser of a food, or an
16 association of one or more of such entities, for any claim arising out of
17 weight gain, obesity, a health condition associated with weight gain or
18 obesity, or other generally known condition allegedly caused by, or
19 allegedly likely to result from, the cumulative effect of long-term
20 consumption of a food.

21 (c) Subsection (b) of this section shall not preclude a civil action
22 where a claim arising out of weight gain, obesity, a health condition
23 associated with weight gain or obesity, or other generally known
24 condition allegedly caused by, or allegedly likely to result from, the
25 cumulative effect of long-term consumption of a food:

26 (1) Includes as an element of the cause of action a material violation
27 of a requirement concerning adulteration or misbranding of food
28 prescribed by a statute or regulation of this state or the United States,
29 and the claimed injury was proximately caused by such violation; or

30 (2) Is based on any other material violation of state or federal law
31 applicable to the manufacturing, marketing, distribution, advertising,
32 labeling or sale of food, provided such violation is knowing and wilful
33 and the claimed injury was proximately caused by such violation. For
34 the purposes of this subdivision, conduct constituting such violation is
35 knowing and wilful if (A) such conduct is committed with the intent to
36 deceive or injure consumers or with actual knowledge that such
37 conduct is injurious to consumers, and (B) such conduct is not required
38 by any regulation, order, rule or other pronouncement of, or any
39 statute administered by, a governmental agency.

40 (d) (1) In any civil action exempted under subdivision (1) of
41 subsection (c) of this section, the complaint initiating such action shall,
42 in addition to other pleading requirements, state that the exemption
43 under said subdivision is being relied upon and further state with
44 particularity for each defendant and cause of action the following: (A)

45 The statute, regulation or other law of this state or the United States
46 upon which such action is based; (B) each element of the cause of
47 action and the specific facts alleged to satisfy each element of the cause
48 of action; and (C) the specific facts alleging that the violation of such
49 statute, regulation or other law proximately caused actual injury to the
50 plaintiff.

51 (2) In any civil action exempted under subdivision (2) of subsection
52 (c) of this section, the complaint initiating such action shall, in addition
53 to other pleading requirements, state that the exemption under said
54 subdivision is being relied upon and further state with particularity for
55 each defendant and cause of action the following: (A) The items
56 required by subparagraphs (A), (B) and (C) of subdivision (1) of this
57 subsection; and (B) facts sufficient to support a reasonable inference
58 that the alleged violation was with the intent to deceive or injure
59 consumers or with actual knowledge that such violation was injurious
60 to consumers.

61 (3) The pleading requirements of this subsection shall be deemed to
62 be substantive law and not procedural in nature.

63 (e) (1) In any civil action exempted under subsection (c) of this
64 section, the obligation of any party or nonparty to make disclosures of
65 any kind under any applicable rule of court or order of the court or to
66 respond to discovery requests of any kind, and all proceedings
67 unrelated to adjudicating a motion to dismiss, shall be stayed prior to
68 the time for filing a motion to dismiss and during the pendency of any
69 such motion, unless the court on motion of any party finds that a
70 response to a specific discovery request is necessary to preserve
71 evidence.

72 (2) During the pendency of any stay of discovery pursuant to
73 subdivision (1) of this subsection, the responsibilities of the parties
74 with respect to the treatment of all documents, data compilations,
75 including electronically recorded or stored data, and tangible objects

76 shall be governed by the applicable rules of court, provided no remedy
77 that conflicts with the provisions of this subsection shall be afforded
78 under such rules of court.

79 (f) (1) Nothing in this section shall be construed to create any claim,
80 right, cause of action or civil liability that did not exist under the law of
81 this state prior to the effective date of this section.

82 (2) Nothing in this section shall be construed to interfere with the
83 exclusive or primary jurisdiction of any governmental agency with
84 respect to violations of a statute or regulation of this state or the United
85 States concerning adulteration or misbranding of food.

86 (g) The provisions of this section shall apply to any civil action or
87 claim described in subsections (b) and (c) of this section that is pending
88 or filed on or after the effective date of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	New section

Statement of Purpose:

To prevent frivolous lawsuits, related to the long-term consumption of food products, against manufacturers, packers, distributors, carriers, holders, sellers, marketers and advertisers of such food products that comply with applicable statutory and regulatory requirements.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]